

1
2
3 BEFORE THE STATE OF WASHINGTON
ENERGY FACILITIES SITE EVALUATION COUNCIL

4 In the Matter of)
5 Application No 2003-01) EXHIBIT 50 (CW-T)
6 SAGEBRUSH POWER PARTNERS, L.L.C.)
7)
8 KITTITAS VALLEY WIND)
POWER PROJECT)
9)
10)

11 KITTITAS COUNTY RESPONSE TESTIMONY

12 WITNESS #1: CLAY WHITE

13
14 Q Please state your name and address for the record?

15 A My name is Clay White and my business address is 411 N. Ruby Street, Ellensburg
16 Washington 98926.

17
18 Q What is your present occupation, profession; and what are your job responsibilities and
19 duties?

20 A Planner II, Kittitas County Community Development Services. I am also one of the
21 records custodians for records of the Kittitas County Community Development Services
22 Department.

23
24 Q Included with your prefiled testimony are a number of exhibits. Are you sponsoring the
25 admission of all of these exhibits in this matter?

1
2 A Yes.

3
4 Q Are the content of these exhibits either matters based upon your personal knowledge or
5 based upon the files and records of the Kittitas County Community Development
6 Services Department?

7 A Yes.

8
9 Q To the best of your knowledge are the contents of these exhibits true?

10 A Yes.

11
12 Q Are you able to answer under cross examination questions related to these exhibits?

13 A Yes.

14
15 Q Would you please identify what has been marked as Exhibit 50-1 (CW-1).

16 A Exhibit 50-1 (CW-1) is a resume of my educational background and employment
17 experience.

18
19 Q Would you please describe the main focus of your testimony?

20 A WAC 463-28-040 – Inability to resolve non-compliance.
21 Pre-emption and what the applicant must prove in order to be granted pre-emption over
22 local land use. Information and background on the process since the applicant approached
23 Kittitas County in March 2002.

1 Q According to WAC 463-28-040 what must the applicant prove in order for the EFSEC
2 Council to grant pre-emption over the local land use process?

3 A WAC 463-28-040 provides that the applicant must prove the following:

- 4 1) That the applicant has demonstrated a good faith effort to resolve noncompliance
5 issues.
- 6 2) That the applicant and local authorities are unable to reach an agreement that will
7 resolve the issues.
- 8 3) That alternate locations which are within the same county and city have been
9 reviewed and have been found unacceptable.
- 10 4) Interests of the state as delineated in RCW 80.50.010.

11
12 Q Can you give me a brief overview of some of the relevant facts involving each of the
13 four criteria?

14 A Yes.

15
16 Q Has the applicant demonstrated a good faith effort to resolve noncompliance issues?

17 A The brief answer is no. When Zilkha Renewable Energy applied to EFSEC for permits in
18 January 2003 they made no attempt at that time to apply to Kittitas County in a timely
19 manner in order to resolve non-compliance issues. It took the applicant five months to
20 complete a short application. The applications to the County prior to June 2003 were not
21 complete. They had major flaws like the application not being signed, not providing a
22 list of property owners within 300' of the project site, not providing the signatures of the
23 landowners within the project area, and stating that they were only applying for certain
24 permits from the County but not those required in KCC 17.61A. The major flaws within
25

1 each submittal were the most basic elements of the application and listed on the front
2 page of the application Exhibit 50-2 (CW-2).

3
4 In all the years I have been a Land Use Planner I have never had an applicant provide an
5 application with so many fundamental flaws so many times. I cannot help but think that
6 this was a strategy of Zilkha's all along. This issue was even brought up to the applicant
7 when they continually delayed submitting a complete application to the County. Exhibit
8 50-3 (CW -3) When a complete application was finally received I sent out the Notice of
9 Application within one week. This was the first and only action that the County had
10 control over and it was completed in a timely manner. Zilkha Renewable Energy knew
11 that we were relying on the DEIS to be published which is why we could not give them a
12 conclusive date when the County would hold hearings. On numerous occasions between
13 June and October 2003 we let Zilkha know how much time it would take the County to
14 process their application once an adequate DEIS was complete and the process was in our
15 hands Exhibit 50-4 (CW -4). When the DEIS completion date was pushed back so was
16 our timeframe.

17
18 Chris Taylor has stated numerous times that the County is delaying their project. As I am
19 the only person in charge of processing their application I have to assume he is saying
20 that I am delaying their project. To say that I am holding up their project would mean that
21 I have a vested interest in the outcome of their project. As a Land Use Planner I take a
22 neutral roll in all of the projects that are submitted to Kittitas County. If I delayed the
23 Kittitas Valley Wind Power project from being processed I would be fired from my job.

1 Q Have the applicant and you been unable to reach an agreement that will resolve the
2 issues?

3 A I believed that there was an agreement reached on how the consistency issue would be
4 resolved. The process agreed to was that Zilkha would pursue a change in land use and
5 zoning designation like anyone else. Zilkha simply unilaterally withdrew their
6 application with the County. The permit process outlined in Kittitas County Code 17.61A
7 has not changed since Zilkha Renewable Energy applied to Kittitas County in June 2003
8 Exhibit 50-5 (CW-5). Zilkha Renewable Energy knew we were relying on the Draft EIS
9 to be issued before we could move forward. When the DEIS issuance date was moved
10 back several times our review hearing dates were moved back. With EFSEC being the
11 lead agency the only portion that Kittitas County had control over was issuing the Notice
12 of Application when Zilkha Renewable Energy filed an application in June 2003.

13
14 I worked very hard to help EFSEC in the preparation of the DEIS when allowed and I
15 certainly believe that our help sped up the DEIS issuance. When I discovered that
16 Shapiro and Associates were not completing an offsite alternative analysis I let EFSEC
17 know right away. To speed up the process we even had a County consultant
18 Huckell/Weinman and Associates (HWA) complete the analysis instead of Shapiro and
19 Associates. Both EFSEC staff and Chris Taylor stated that Shapiro was moving very
20 slowly on the preparation of the DEIS for the Kittitas Valley project. I also offered to
21 participate in the preliminary staff level review of DEIS to give comments from the
22 County perspective so when the DEIS was issued it would be as complete as possible.
23 That offer was declined by Irina Makarow. Irina did, however, agree that EFSEC would
24 provide Kittitas County with a response to DEIS comments Exhibit 50-6 (CW-6). I
25 understand that Zilkha was not happy that we would be provided with a response to

1 comments, but EFSEC staff stated that they would provide us with additional information
2 as needed since we were not able to review the Preliminary DEIS.

3
4 In December 2003, the EFSEC Council asked Kittitas County to provide them with a
5 timeline based upon the DEIS issuance in December which we did in January 2004. The
6 time frames in that chart for when the County would project its work to be completed
7 were the same as those disclosed to Zilkha on several occasions. Exhibit 50-7 (CW-7)
8 The time variable that impacted the County ability to process the application was the
9 issuance of the DEIS over which the County had no control.

10
11 Zilkha Renewable Energy then filed for preemption without ever discussing the issues
12 with us. It seems they were concerned that Kittitas County was going to make them go
13 through two separate SEPA processes. That is not the case. Our county code provides
14 that any administrative decision of County staff is subject to review by the Kittitas
15 County Board of County Commissioners. A decision to go forward with a hearing with a
16 DEIS is a decision that would potentially be subject to review. Our timeline simply
17 reflected that fact.

18
19 The first time Chris Taylor ever had a discussion to attempt to clarify this fact was after
20 they filed their preemption request and withdrawn their County application. During a
21 meeting regarding the Wildhorse project in March 2004 I explained to Chris Taylor that
22 we were never going to make a separate SEPA determination. When we were to receive
23 the response to comments per Irina, I would have to accept those documents and make an
24 administrative decision that we collectively had adequate environmental review to
25 proceed forward with an amendment to our comprehensive plan and rezone for the

1 property. That would be a decision appealable per KCC 15A Exhibit 50-8 (CW-8). Chris
2 stated that he did not read the flowchart that way and I replied by letting him know that
3 all he had to do was ask.
4

5 Q Have alternate locations within Kittitas County been reviewed and been found
6 unacceptable?

7 A No, at this time there are currently two other wind power project applications that have
8 been applied for within Kittitas County. Both the Desert Claim Wind Power project and
9 the Wild Horse Wind power project are located within Kittitas County. Both of these
10 projects are in the review stage and neither of them has been found to be unacceptable at
11 this time. The Desert Claim Wind Power project is being reviewed by Kittitas County
12 and has not been found to be an unacceptable location for a Wind Power project by either
13 Kittitas County or the applicant. The Wildhorse Wind power project is also in the review
14 stage and has not been found to be an unacceptable location for siting a wind farm.
15 According to Chris Taylor there is also at least one other alternative location in Kittitas
16 County that has been identified and not found unacceptable. In Chris Taylor's pre-filed
17 testimony he states "We produced visual simulations and made significant modifications
18 – including removing turbines entirely from Lookout Mountain (one of the best wind
19 resources in the valley) – in response to suggestions. The overall project was reduced
20 from over 16,000 acres to just 7,000 acres." Exhibit 50-9 (CW-9)
21

22 Q What about interests of the state as delineated in RCW 80.50.010?

23 A Kittitas County has an adopted Comprehensive Plan created under the guidelines of the
24 Growth Management Act. We are required to plan under the provisions of the GMA.
25 Kittitas County has been proactive in implementing development regulations that outline

1 a clear process for developing wind farms within the County. RCW 36.70A.020 outlines
2 13 goals that we must plan under and take into account when developing and maintaining
3 our development regulations. Our Comprehensive Plan has been found to be in
4 compliance with those goals by the State of Washington. When Zilkha Renewable
5 Energy withdrew their application from the County they were deciding not to meet the
6 EFSEC and GMA goals and policies. I believe that approving this project contrary to the
7 requirements of EFSEC and the Growth Management Act is not in the best interest to the
8 State of Washington. With tax subsidies currently unavailable I do not believe that this
9 project will provide an abundant amount of energy at a reasonable cost. Further, I do not
10 believe that the project will even be built if those government subsidies are not available.
11 In Chris Taylor's pre-filed testimony he refers to Wallula as being similar to the Kittitas
12 Valley Wind Power project. In regards to interests of the state, I would say they are vastly
13 different. The Kittitas Valley Wind Power project has a nameplate potential on 180MW
14 with an estimated 33% efficiency. This means that the project is estimated to produce
15 about 60MW of power. In reviewing the Wallula project, they are estimating an output of
16 1300MW of power. Further, the project proponents for the Wallula project acted in
17 accordance with the GMA and EFSEC regulations by seeking consistency with the local
18 land use process prior to submitting their application to EFSEC. Seeking pre-emption of
19 the local land use process that is established and works under the GMA certainly cannot
20 be of interest to the State of Washington. Exhibit 50-10 (CW-10)

21
22 Q Can you please explain why your testimony is focused on the pre-emption issue and not
23 siting issues?

24 A After reviewing the information in the preemption request and the prefled testimony, the
25 criteria to override local land use through preemption clearly have not been met as

1 defined in WAC 463-28-040. Since the EFSEC council cannot recommend approval of
2 the project without finding for preemption, it seems unnecessary to discuss the other
3 issues.

4
5 Q When did Zilkha Renewable Energy approach Kittitas County about siting a Wind Farm
6 in Kittitas County?

7 A I first met with Zilkha Renewable Energy on March 14th, 2002.

8
9 Q At that time what was the process for siting a Wind Farm in Kittitas County?

10 A In March 2002 the process for siting a Wind Farm in Kittitas County was through a
11 conditional use permit.

12
13 Q Did you meet with Zilkha Renewable Energy staff regarding the Conditional Use Permit
14 process?

15 A Yes, I met with their staff numerous times between March and May 2002. At these
16 meetings we discussed everything from process to application format.

17
18 Q Do you believe that Zilkha Renewable Energy staff understood the permitting process?

19 A Yes.

20
21 Q Did the applicant ever discuss when they planned to submit an application for a
22 Conditional Use Permit to Kittitas County?

23 A Yes, in both April and May 2002 Chris Taylor let me know that they were preparing an
24 application that would be submitted within weeks.

1 Q Could Zilkha Renewable Energy have submitted an application for a Conditional Use
2 Permit for a Windfarm under the timelines they gave to you?

3 A Yes, they had both the opportunity and time to submit a complete application. They could
4 have vested an application with the County at any time if they wished to pursue their
5 permit under the Conditional Use Permit process.
6

7 Q Did Zilkha Renewable Energy staff ever discuss a date that the project had to be built by?

8 A Yes, they said that their project was time sensitive and had to be fully built by the end of
9 2004.
10

11 Q Did Zilkha Renewable Energy ever submit an application to Kittitas County for a
12 conditional use permit?

13 A No
14

15 Q Do you have any idea why they did not submit a CUP application?

16 A No. From all of the meetings I had with the applicant, they understood the process and
17 had plenty of time to submit a development activities application to Kittitas County but
18 for whatever reason simply chose not to do so.
19

20 Q Did the method of processing a Windfarm application with Kittitas County change?

21 A Yes. It changed in late 2002
22

23 Q What did it change?

24 A Basically, it shifted the decision making process from the part time appointed Board of
25 Adjustment to the full time elected Board of County Commissioners. This process was

1 modeled after the Master Planned Resort process that the County had adopted several
2 years ago. It provides for a single consolidated process that addresses all issues involving
3 the placement of a windfarm in Kittitas County.
4

5 Q Did Zilkha Renewable Energy staff participate in the public hearings changing the
6 application process?

7 A Yes.
8

9 Q Did Zilkha Renewable Energy ever suggest that an EFSEC exception be added to the new
10 proposed ordinance?

11 A No, they simply asked that the CUP process stay the same.
12

13 Q When this revised process was adopted by the Kittitas County BOCC, did Zilkha
14 Renewable Energy appeal the BOCC decision as allowed under law?

15 A No.
16

17 Q After the process was adopted and prior to the application being submitted to EFSEC in
18 January 2003 did Zilkha Renewable Energy staff ever contact you regarding the new
19 application process?

20 A No.
21

22 Q Did anyone from the Zilkha Renewable Energy staff contact you on the process for
23 gaining consistency with local land use if an application were filed with EFSEC prior to
24 the application being submitted to EFSEC in January 2003?

25 A No.

1
2 Q Was Zilkha Renewable Energy staff aware that you were the contact person for Kittitas
3 County on issues regarding their project?

4 A Yes.

5
6 Q So, if Zilkha Renewable Energy staff were to contact the County they would have
7 contacted you?

8 A Yes.

9
10 Q When did Zilkha Renewable Energy submit their application to EFSEC?

11 A January 13th, 2003.

12
13 Q Did Zilkha make any attempt to obtain an EFSEC exception to the Kittitas County code
14 prior to the filing their application with EFSEC?

15 A No.

16
17 Q Were you aware that Zilkha Renewable Energy was going to submit their application to
18 EFSEC prior to January 13th, 2004?

19 A I heard a rumor a few days before they submitted their application to EFSEC that they
20 might be doing something with EFSEC, nothing other than rumor.

21
22 Q Did Zilkha Renewable Energy staff understand that they had a consistency issue when
23 they submitted their application to EFSEC?

24 A. Yes.

1 Q How do you know?

2 A An e-mail from Darrel Peoples to James Hurson dated February 12th, 2004 Exhibit 50-11
3 (CW-11). In that e-mail Mr. Peoples explains that his client intends to work with the
4 county with regards to consistency. This leads me to the conclusion that they must have
5 known about the issue when they submitted an application to EFSEC on January 13th,
6 2004.

7
8 Q Did Zilkha submit an application to the County concurrent with the EFSEC application?

9 A No.

10
11 Q Did Kittitas County follow up with correspondence on the consistency issue?

12 A Yes, the County sent a letter to Darrel Peoples on February 5th, 2003. Exhibit 50-12 (CW-
13 12) Mr. Hurson stated that Zilkha was inconsistent with local land use per RCW
14 80.50.090 and needed to apply to the County to get the consistency issue moving
15 forward.

16
17 Q Did Kittitas County continue to follow up with Zilkha?

18 A Yes.

19
20 Q How?

21 A The County sent an e-mail on February 10th, 2003 to Darrel Peoples to follow up in the
22 letter from February 5th. The County stated that an application needed to be submitted if
23 Zilkha wanted to take care of the consistency issue. Exhibit 50-13 (CW-13)

24
25 Q Did Zilkha respond?

1 A Yes, Darrel Peoples sent the County an e-mail on February 12th, 2003. Exhibit 50-11
2 (CW-11)
3

4 Q In Mr. Peoples letter did he say when Zilkha would be applying to Kittitas County for
5 consistency?

6 A No, the letter stated that he looked forward to working with us but was considering the
7 options Zilkha had.
8

9 Q What options are those?

10 A Mr. Peoples stated that they were considering filing for a text amendment to our zoning
11 and comprehensive plans rather than applying to the County?
12

13 Q What is the deadline for submitting a request for change to the County comprehensive
14 plan?

15 A For an amendment to the comprehensive plan to be considered, a request must be
16 submitted by June 30th of each year to be considered part of the annual amendment
17 process. The GMA only allows us to amend the comprehensive plan once a year except
18 for a limited number of issues such as a new sub-area plan or an emergency.
19

20 Q. Did Mr. Peoples or anyone else from Zilkha file a request for a Comprehensive Plan
21 change by June 30th, 2003?

22 A No.
23

24 Q Did the applicant ever submit any request for a text amendment to the zoning and
25 comprehensive plan?

1 A No.

2
3 Q Did Kittitas County again remind Zilkha that they had a consistency issue that needed to
4 be taken care of if time was an issue for them?

5 A. Yes, the County sent Zilkha another e-mail on February 14th, 2003 letting them know that
6 everyday that an application is not submitted, a further delay occurs. Exhibit 50-14 (CW-
7 14) Per conversations with Darrel Peoples a meeting was set up for March 25th, 2003
8 between County staff and Zilkha.

9
10 Q What was discussed at that meeting?

11 A David Taylor, James Hurson, and I met with Chris Taylor from Zilkha Renewable
12 Energy. We discussed the permit process but stressed to Chris Taylor that the process
13 will largely depend on the type of application they file with the County.

14
15 Q What types of applications were possible?

16 A Zilkha would have had the option to request an approval that required EFSEC approval or
17 they could have submitted an application that would have given the right to develop even
18 without EFSEC approval. We told them that it was up to them which type they filed.

19
20 Q Were there discussions as to how and when to coordinate with EFSEC regarding the
21 processing of an application that Zilkha might make with the County?

22 A Yes. Chris stated that he wanted us to sit down with EFSEC and discuss the issues
23 regarding the timing of the processes. We let him know that such a meeting would be
24 premature since we didn't know when they would submit an application to the County
25 and we didn't know what kind of application they were going to submit. As such we said

1 that the first step is to supply the County with a complete application. Once we had that
2 we would then be in a position for the County to meet with EFSEC staff as needed to
3 coordinate our efforts.
4

5 Q Did Chris Taylor set up a meeting with EFSEC after that meeting even though you told
6 him such a meeting was premature at that point since you still didn't have an application
7 yet?

8 A Yes Exhibit 50-15 (CW-15), the day after we told Chris Taylor that Zilkha needed to
9 supply us with an application before we could talk process with EFSEC, he called
10 EFSEC anyway and set up a meeting.
11

12 Q At the February 25th, 2003 meeting did you specifically let Chris Taylor know that a
13 meeting was not needed until such time as an application was filed with Kittitas County?

14 A Yes, and I found it very strange that he would call EFSEC and set up a meeting even
15 though we directly told him that it wasn't needed until an application was filed.
16

17 Q Did Kittitas County contact EFSEC?

18 A Yes, the County contacted Allen Fiksdal from EFSEC and explained the situation. Mr.
19 Fiksdal agreed that a meeting was not needed until Zilkha provided an application to
20 Kittitas County. This information was relayed to Chris Taylor. Exhibit 50-16 (CW-16)
21

22 Q Did Chris Taylor send you his personal version of meeting minutes from February 25,
23 2003?

24 A Yes.
25

1 Q Were those "minutes" an accurate rendition of what occurred at that meeting?

2 A No. In fact his "minutes" Exhibit 50-17 (CW-17) in several respects reflected the
3 complete opposite of the conversation that actually occurred. See Exhibit 50-16 (CW-16)
4 We eventually had to ask Mr. Taylor to stop sending us his meeting minutes because they
5 were unreliable given the many inconsistencies between them and what took place in our
6 actual meetings.

7
8 Q Did EFSEC hold their Scoping hearing on March 12th, 2003?

9 A Yes.

10
11 Q At that meeting did the consistency issue come up?

12 A Yes. Exhibit 50-18 (CW-18)

13
14 Q Based upon conversations that took place at that meeting was it your expectation that an
15 application would be filed within the next week?

16 A Yes. If Zilkha chose to supply Kittitas County with an application specifically tied to the
17 EFSEC process as they eventually did, the application would only need to be a few
18 pages long. Most people, who fill out our consolidated application, submit complete
19 applications the first time.

20
21 Q Did you also expect that if the applicant had any questions regarding the processing of
22 their application, that they would contact you?

23 A Yes. If they didn't know where to sign the application, what adjoiners meant or why
24 landowners had to consent to the application, I expected they would call and ask. Further,
25

1 if they had any questions regarding how we would process their application I figured they
2 would ask.

3
4 Q Was an application submitted to Kittitas County within the next week?

5 A No.

6
7 Q Was there some sense of urgency on the part of the County to receive a complete
8 application from Zilkha in early 2003?

9 A Yes. EFSEC representatives came to the County shortly after Zilkha submitted the
10 application to EFSEC. During that meeting, EFSEC staff handed out a draft schedule
11 that indicted the DEIS would be issued by June. Exhibit 50-19 (CW-19) We wanted an
12 application from Zilkha as soon as possible so that we could get our work done in time to
13 work with the DEIS and have enough information so that we could proceed with our
14 process.

15
16 Q When was the next time you spoke to the applicant?

17 A I talked to Chris Taylor by phone on March 18th, 2003.

18
19 Q What did you discuss?

20 A He let me know that they were still putting together a draft application but that I should
21 get it within the next couple of days. I relayed to him that I was going to be gone from
22 March 28th until April 7th and it would be appreciated if he could drop off the application
23 as soon as possible.

24
25 Q When did Mr. Taylor drop off the draft application?

1 A March 27th, 2003 in the late afternoon.

2
3 Q So it was dropped off the afternoon before you were leaving for 10 days?

4 A Yes.

5
6 Q And Chris Taylor had full knowledge that he was dropping the draft application off the
7 day before you were leaving for 10 days?

8 A Yes. Exhibit 50-20 (CW-20)

9
10 Q How many working days after you returned did it take you to review the application and
11 make comments?

12 A 7 business days. Exhibit 50-21 (CW-21)

13
14 Q Was the draft application complete and ready for formal submission with fees?

15 A No, the application was deficient of even the most basic elements of an application.
16 Exhibit 50-22 (CW-22). From reading the cover letter it was not even apparent what they
17 were applying for. The draft application states that they are applying for a rezone and
18 comprehensive plan change but not a development agreement and development permit.
19 KCC 17.61A is clear that a development agreement and permit are required and Zilkha
20 staff was told that on numerous occasions. The draft application lacked signatures of both
21 the applicant and the landowners as well. A 300' adjoiner's list was also not provided in
22 the application as required. The items listed above are the basic elements of an
23 application. When reviewing the first draft it was hard to believe that a company that
24 stated how quickly they wanted to resolve consistency would turn in an application so
25

1 poorly put together. At that point, I wondered how many times they must have had to turn
2 their application into EFSEC considering it was a much larger application.
3

4 Q After pointing out the deficiencies, how long did it take Chris Taylor to revise the
5 application?

6 A 15 days.
7

8 Q So, when the application was returned to you was it now complete and ready for formal
9 submission with fees?

10 A No. The only thing that was revised was the cover letter to the application. Nothing
11 within the application was changed including lack of signatures and 300' joiners' list.
12 If fact, Chris Taylor revised the cover letter to state he was now applying for a
13 development agreement and development permit but he did not change the actual
14 application inside. Exhibit 50-23 (CW-23)
15

16 Q Did this surprise you?

17 A Yes, with over two weeks time I had expected Zilkha to return an application that was
18 complete with substantive changes based upon my April 15th letter. I could not help but
19 think that he did it on purpose. It took him two weeks to revise a cover letter and not
20 change anything within the application. It just doesn't add up. Requirements like the
21 application being signed and providing a 300' joiners list are the first requirements on
22 the first page of our Kittitas County Consolidated Application Packet. I have never had
23 anyone have this much trouble with an application.
24
25

1 Q After receiving only a revised cover letter with no application changes, how quickly did
2 you respond to the applicant?

3 A I responded on the same day Exhibit 50-24 (CW-24).

4
5 Q So, did the applicant revise the application per the April 15th, 2003 letter from you to
6 Chris Taylor?

7 A Yes we received a revised application on May 6th, 2003.

8
9 Q When did you review the new application?

10 A May 7th, 2003.

11
12 Q So, was the application complete so you could proceed with the Notice of Application?

13 A No. Among other things, the application still did not have any landowner signatures on
14 the application. It also failed to include the "300 foot adjoining list" (a list of the owners
15 of property within 300 feet of the boundary of the project area. This list is used to send
16 notice to those individual related to the application in accordance with our county and
17 state notice requirements) It was very frustrating that I had told Mr. Taylor over and over
18 that those items were needed and that he continued to omit the information needed to
19 have a complete application. Exhibit 50-25 (CW-25)

20
21 Q So, you responded back to the applicant the next day after receiving their application?

22 A Yes. Exhibit 50-26 (CW-26)

23
24 Q How long did it take Zilkha to send in their next revised application?

1 A Nearly two weeks. They re-submitted the May 6th, 2003 application on May 20th, 2003
2 with some changes.

3
4 Q Was the application complete this time?

5 A No. This time the statements in the application on page two did not match the exhibits
6 they presented. Exhibit 50-27 (CW-27)

7
8 Q How long did it take for you to respond to that latest version of the application?

9 A Six working days.

10
11 Q At this point did you feel that Zilkha was making a good faith effort to submit a complete
12 application to the County?

13 A No. At this point I was very frustrated with the tactics Zilkha was taking. They could
14 apparently submit a lengthy and complete application to EFSEC the first time but could
15 not submit a complete, short application to the County the first, second, third, or fourth
16 times. The issues that made their applications incomplete were basic issues like not
17 signing the application and not providing a list of adjoiners within 300' of the project
18 area. Further, their applications were submitted multiple times with these fundamental,
19 basic errors. I was never asked to clarify where they needed to sign the application or
20 what an adjoiner's list is but apparently it was difficult for their staff to figure out. What
21 Zilkha staff did and said they were going to do were two completely different things.
22 They stated their project was time sensitive but they made no attempt to solve
23 consistency quickly and efficiently. The only conclusion I can draw is that this was their
24 strategy from day one and they had no intention of going through the County process as
25 prescribed by law. I have processed hundreds of development applications and many of

1 them have been time sensitive projects. In all cases except this project, applicants have
2 worked with me and submitted required materials and applications right away so they
3 could proceed with the application process. To submit incomplete applications over and
4 over and never ask for assistance from County staff leads me to believe that this was not
5 a good faith effort at all.

6
7 Q Was there another application filed with the County at that time that Chris Taylor could
8 have used as a template if they were confused about the county process?

9 A Yes. The Desert Claim wind power project is located directly to the east (starts about two
10 miles to the east) of the Kittitas Valley project and is asking for a similar amount of wind
11 towers and the project area is similar in size. The applicants for the Desert Claim project
12 submitted a complete application with their first submittal on January 28th, 2003 and a
13 Notice of complete application was issued on February 4th, 2003. Exhibit 50-28 (CW-28)
14 and Exhibit 50-29 (CW-29)

15
16 The Desert Claim application was available as a template to the project proponents of the
17 Kittitas Valley project but they choose not to use it. When I let Chris Taylor know that
18 they could basically copy their application for form and function and just put in their
19 information Chris Taylor stated that they would never turn in an application to the
20 County like that.

21
22 Q Has Desert Claim expressed any difficulties in understanding or working through the
23 Kittitas County land use process?

24 A No. Their first submittal to the County was a complete application. If the Desert Claim
25 staff ever needs information they contact me directly. They have never expressed

1 displeasure with our procedures for processing a Windfarm application. They have also
2 never expressed that our process is confusing. They have never indicated any problem in
3 understanding the steps as laid out in KCC 17.61(A). They are moving through our
4 process and public hearings will be taking place this fall. This site has not been found
5 unacceptable as a Windfarm location.

6
7 Q Did the Kittitas Valley application, when submitted and found complete, differ from the
8 Desert Claim project application?

9 A Yes, it was shorter. Since the applicant decided to tie their application to the EFSEC
10 process, all they had to do was fill out the correct application(s) and submit it. Having the
11 Desert Claim application to refer to should have been a bonus to them if they had
12 questions, but apparently they decided not to use it as a reference tool.

13
14 Q When did the applicant finally get the County a complete application?

15 A Zilkha submitted their final version on June 16th, 2003 and it was deemed a complete
16 application the same day. Exhibit 50-30 (CW-30)

17
18 Q When did you issue the Notice of complete Application?

19 A June 25th, 2003. Exhibit 50-31 (CW-31)

20
21 Q So, it took the applicant five months to give the County a complete application?

22 A Yes.

23
24 Q When was the next time you met with Zilkha staff?

25 A June 26th, 2003.

1
2 Q What did you discuss?

3 A Irina let me know that day that the DEIS was going to be issued in late August/early
4 September. In the meeting with Zilkha we discussed the timelines again. I let them know
5 that if an adequate DEIS was issued we would probably be able to complete our hearings
6 by mid-January 2004.
7

8 Q Had you discussed timelines before?

9 A At every meeting we discussed timelines, the problem was that except for issuing the
10 Notice of Application, the County had no control over the DEIS issuance or its
11 completeness. I was always happy to discuss timelines with the applicant but always
12 cautioned them that the timeline will change based upon when an adequate DEIS is
13 issued. On several occasions we went over our process and hearing procedures we would
14 follow once the DEIS was issued.
15

16 Q Can you explain that further?

17 A At the meeting in June with Zilkha the DEIS issuance date was August/September. If we
18 received an adequate document in August/September we would probably have our
19 process completed by January 2004 because our total process time was four to four and a
20 half months.
21

22 Q Were you expecting to have a Final EIS issued before Kittitas County land use hearings?

23 A No. We are a Growth Management Act County and all our planning calls for following
24 the requirement of numerous laws including the GMA, SEPA, and the Planning Enabling
25 Act. The EFSEC statutes provide that Counties are not required to have a FEIS issued in

1 order to undertake its land use review. This is understandable in light of the fact the
2 EFSEC is the lead agency under SEPA for these projects and that the EFSEC rules
3 prohibits EFSEC from issuing an FEIS until after the adjudication process is complete.
4 Neither the EFSEC regulations nor any other law, however, prohibit Counties from
5 undertaking some reasonable level of environmental review before undertaking review of
6 consideration of a large land use change such as proposed. The County was seeking to
7 have sufficient information to be what we termed a "functional equivalent" to a FEIS.
8

9 Q So the County process in total would take about 4 to 4 ½ months from the time the
10 county received a functional equivalent to FEIS?

11 A Yes. It just happens that the DEIS wasn't issued until December instead of June as
12 originally projected or August/September as EFSEC then proposed. Zilkha was fully
13 aware of our timelines as reliance of the DEIS per the July 2nd, 2003 letter from Darrel
14 Peoples Exhibit 50-32 (CW-32).
15

16 Q Did the County attempt to help in expediting the DEIS?

17 A Yes. On July 11th, 2003 I met with Huckell/Weinman and Associates, Shapiro and
18 Associates and Irina Makarow from EFSEC. At that meeting she stated that they were not
19 going to produce an offsite analysis because it was not required for their process.
20

21 Q Did you talk to EFSEC about the requirements to complete an Offsite alternative
22 analysis?

23 A Yes. I talked to Irina and explained that although their process does not require this to be
24 complete, we are required to have it because of WAC 197-11. I let her make the decision
25

1 on whether it should be done but explained the counties perspective. Exhibit 50-33 (CW-
2 33).

3
4 Q Did you talk to Zilkha about this?

5 A Yes, I talked to both Chris Taylor and Tim McMahon prior to meeting with Zilkha on
6 August 27th, 2003.

7
8 Q Who is Tim McMahon?

9 A He is a land use attorney representing Zilkha at the time.

10
11 Q During a phone call with Tim McMahon on August 26th, 2003 did he agree with you that
12 the off site alternative analysis needed to be completed as a requirement of SEPA?

13 A Yes, he understood that we needed this analysis per WAC 197-11 because part of the
14 County review entailed a rezone and agreed that it needed to be completed.

15
16 Q So what did you discuss on August 27th?

17 A Jim Hurson and I met with Chris Taylor at their office and we had a conference call with
18 Tim McMahon and Darrel Peoples. I explained to all of them that an offsite analysis was
19 required to be completed and they agreed. We discussed using the potential Wildhorse
20 project in the analysis and they asked if all of us could meet with the enXco people and
21 HWA so one study could be used and modified for each DEIS to be issued. I offered to
22 call and get all parties together for a meeting.

23
24 Q So you then met with Zilkha, enXco, and HWA?
25

1 A Yes, on September 3rd, 2003 I met with Jim Hurson, enXco representatives,
2 Huckell/Weinman and Associates and Zilkha representatives. We worked it out so HWA
3 could work on an off site alternative in coordination with Zilkha. With this process it
4 sped up the process since HWA was already working on the analysis for the Desert Claim
5 DEIS. Chris Taylor mentioned that Shapiro and Associates was very slow in producing
6 work. All parties agreed that the process we worked out was the most efficient.
7

8 Q So by HWA doing the off-site alternatives section, the County was actually attempting to
9 speed up the process for the DEIS issuance?

10 A Yes, we knew that both EFSEC and Zilkha were anxious to issue the DEIS but both
11 agreed that they did not want to issue a DEIS with a huge fundamental flaw. I was happy
12 that this was caught prior to the DEIS issuance as that would have put the project behind.
13

14 Q What would have happened if you had not caught this error?

15 A The full analysis would have had to be completed along with the response to comments
16 that EFSEC agreed to produce for the County. As lead agency EFSEC has the
17 responsibility to produce a DEIS that meets the required criteria as listed in WAC 197-
18 11. Although I was surprised the Shapiro and Associates or CH2Mhill did not alert them
19 to this issue, I am glad it was caught to avoid such a big procedural flaw.
20

21 Q What other measures did you take to try and expedite the process?

22 A On October 7th, 2003 the County sent Darrel Peoples an e-mail. Exhibit 50-34 (CW-34)
23 We thought it would be helpful to start discussions on getting a draft development
24 agreement together so we could move forward as quickly as possible once the DEIS was
25 issued.

1
2 Q Did you meet with Darrel Peoples and Chris Taylor to discuss getting a Draft
3 Development Agreement put together as soon as possible?

4 A Yes, on October 16th, 2003 Jim Hurson and myself met with Chris Taylor and Darrel
5 Peoples to discuss project status and the draft development agreement. In discussing
6 format we mentioned that the development agreement could be as simple as asking that
7 the County approve the project as long as EFSEC approves the project. Our suggestion
8 was to make it simple and just put in as much mitigation as possible. That mitigation
9 could then be forwarded to EFSEC for their hearings and decision making. Darrel
10 Peoples said that he would draft up an agreement and get it to us for us to review as soon
11 as possible.
12

13 Q Has Darrel Peoples or anyone from Zilkha ever supplied the County with a Draft
14 Development Agreement?

15 A No. At the October 16th, 2003 meeting I thought we were all on the same page and that
16 they would supply us with a draft so we could move forward and get their project moving
17 once the DEIS was issued and a response document from the DEIS was received. Mr.
18 Peoples never contacted me again regarding this issue and he never supplied the County
19 with a review draft.
20

21 Q Did you ever discuss response to comments with Irina Makarow?

22 A Yes, I had spoken to Irina Makarow and we discussed the Preliminary DEIS. I let her
23 know that if I could comment on the PDEIS it would be very helpful to the County in
24 moving forward as quickly as possible. Since I had never seen any PDEIS documents I
25 was afraid that there may be some issues similar to the offsite analysis not being

1 completed. She let me know that per their procedures I was not allowed to comment on
2 the PDEIS. I then asked if EFSEC would produce a response to comments if needed so
3 that we would have a functional equivalent to a Final EIS. She e-mailed me and let me
4 know that producing a response to comments would not be a problem as long as it was
5 labeled a draft for EFSEC purposes. Exhibit 50-6 (CW-6)

6
7 Q So EFSEC staff agreed that a response to comments would be appropriate if the draft was
8 not sufficient?

9 A Yes, I would have rather reviewed the predraft and made comments but I figured that
10 EFSEC was the lead agency and therefore it was their decision.

11
12 Q Did you have further discussions about the DEIS and off-site alternatives with EFSEC
13 staff?

14 A Yes. On November 17th, 2003 Irina Makarow called me to let me know that she was
15 going to leave the off-site alternatives section out of the DEIS and would then include it
16 in the response to comments. Her reason was that she thought EFSEC did not need that
17 section in the DEIS and didn't want any confusion. I let her know that leaving a prepared
18 and complete section out of the DEIS was wrong and would cause problems. Further, if
19 this section were left out then people would not get a chance to comment on it and
20 Kittitas County would then have to have a comment period on it when the response to
21 comments was prepared. This would only add time to the Kittitas County process.

22
23 Q When was the DEIS issued by EFSEC?

24 A December 15th, 2003.
25

1 Q Based upon your review, were there deficiencies in the document that would need
2 clarification prior to you deeming the information suitable for proceeding?

3 A Yes, as it states on the cover of the document, it is a draft. Since I was not able to review
4 the PDEIS there were a number of issues from the County perspective that needed to be
5 looked at before we could proceed. Since Irina Makarow stated that EFSEC would be
6 preparing a response to comments for the County, I listed what I thought were some key
7 issues we needed to address before holding our public hearings. Exhibit 50-35 (CW-35).
8

9 Q Could you please highlight for me some of the more glaring deficiencies in the DEIS?

10 A Yes. As it states in the title of the document prepared and issued on December 15th, 2003,
11 it was a Draft EIS and inevitably there were going to be issues within the document
12 needing further study or clarification. As stated previously, EFSEC preferred preparing a
13 response document rather than allowing myself to review the preliminary DEIS. There
14 were a number of questions and issues that came up when reviewing the DEIS as a result
15 of not seeing the information previously. Zilkha choose to unilaterally withdraw their
16 application before any of the issues in my January 15th, 2004 letter could be discussed.
17 They also withdrew their application before EFSEC could contact the County and
18 coordinate the preparation of the response document.
19

20 A couple of the highlighted issues that needed to be discussed were:
21

22 1) One of the basic issues when looking at a development application is how large the
23 property within the project proposal is. For Kittitas County this is both a zoning and
24 comprehensive plan issue since the applicant is required to apply for both a rezone and
25 comprehensive plan amendment. In the December 15th, 2003 DEIS the property within

1 the project area is shown as approximately 7,000 acres Exhibit 50-36 (CW-36). Within
2 the ASC filed with EFSEC on January 13, 2003 the applicant specifies that the project
3 area is approximately 5,000 acres Exhibit 50-37 (CW-37). In the June 16th, 2003
4 application submitted to Kittitas County they state that the project area is approximately
5 5,900 acres Exhibit 50-38 (CW-38).

6
7 From reviewing each submittal it seems as if the project has changed a substantial
8 amount within the last year. The applicant never amended their Kittitas County
9 application to show that the rezone and comprehensive plan change they were requesting
10 had changed from an area of 5,900 acres to 7,000 acres. That is a tremendous change. If
11 we had received a response to comments I am sure this issue would have been brought up
12 and solved. It would not have benefited EFSEC, Zilkha, or Kittitas County if we had
13 granted a 5,900-acre rezone and comprehensive plan amendment to Zilkha Renewable
14 Energy and the actual area was 7,000 acres. This is an issue that needed to be discussed,
15 as I am not even sure that an environmental analysis has taken place on the 2,000 acres
16 added to the project between January 2003 and December 2003.

17
18 2) (Page 3.9-47) – Light and Glare – *Light* – In the first paragraph the DEIS refers to a
19 letter from the FAA stating this project will not interfere with aviation operations. After
20 reviewing that letter it clearly states that the information they are giving is based off of
21 towers with a maximum height of 350 feet above ground. Since the turbines may extend
22 up to 410 feet above ground the letter from the FAA to Zilkha Renewable Energy isn't
23 valid and more information should be obtained.

1 The letter also states *“This information is based, in part, on the frequency description*
2 *which includes specific coordinates, heights, frequencies and power. Any changes in*
3 *coordinates, heights, and frequencies or use of greater power will void this*
4 *determination. Any future construction or alteration, including increase to height, power,*
5 *or the addition of other transmitters, requires separate notice to the FAA”.*

6
7 In the DEIS, Zilkha discusses three different possible turbine scenarios. What we were
8 looking for was a revised letter addressing the current project proposal as the letter in the
9 DEIS was invalid. How would the County know if there was going to be any FAA issues
10 if the only information we had on the issue was an invalid letter from the FAA? If Zilkha
11 had new information they could have submitted that to EFSEC for the response document
12 and the issue would have been resolved.

13
14 3) On page *ii paragraph 1* EFSEC states that they are the only non-federal agency
15 authorized to permit the proposed project. This is not true, as Kittitas County is also a
16 non-federal agency authorized to permit this project. At this time the Desert Claim Wind
17 Power project submitted by enXco, Inc. is being processed by Kittitas County.

18
19 This paragraph should have been taken out for the response document, as it was not true.

20
21 4) (Page 3.13-16) **3.13.2 –Impact of the proposed action – Radio interference** – In the
22 second paragraph of the section it says *“To date, information regarding the frequency*
23 *spectrum of electrical noise generated by the wind turbine generators at locations*
24 *surrounding the generator has been requested from the Applicant, but has not yet been*
25 *provided.”*

Clarification on this issue was needed for the response document as the DEIS stated that they were still waiting for some pertinent information from the applicant.

5) (Page 2-17) 2.2.3 - Meteorological Towers – Specific number of towers and locations are needed in order to assess if these will have an impact on the environment. How can they be looked at if the DEIS stipulates that the applicant has no idea where they will go. If the approximate locations are not shown on the project site plan then they will need an administrative conditional use permit from Kittitas County for each tower (we could process them as one permit application).

This project is a huge zoning and land use issue for Kittitas County. How could Kittitas County make a land use decision on a 5,900-7,000 acre rezone and a 5,900 – 7,000 acre comprehensive plan amendment when we do not even know where the meteorological towers are going to be placed? If I accepted this information I would be asking my Board of County Commissioners to make a decision without the adequate environmental information. This would have been an easy issue to solve but the applicant withdrew their application before the issue was even discussed.

6) On page *i* of the fact sheet the DEIS describes three different proposals for the KV Wind Power Project. In both the original application to EFSEC and subsequent application to Kittitas County the applicant indicated that they only proposed one project with a maximum of 121 turbines with a maximum height of 410 feet. While changes from micro siting are inevitable, all project scenarios should have been discussed in the original applications submitted to both the State and County. If the applicant intends to

1 proceed with 3 different scenarios then environmental studies should be detailed for all 3
2 in every aspect that SEPA requires.
3

4 In reviewing the DEIS it shows that the applicant is now looking at three scenarios and
5 may put up as many as 150 turbines. The application to Kittitas County states that there
6 will be a maximum of 121 turbines. This is an issue that needs to be discussed, as the
7 applicant never amended their County application. Even the EFSEC website for the
8 Kittitas Valley project shows that the application is for a maximum of 121 turbines.
9 Exhibit 50-37 (CW-39). This is another issue that could have been discussed and solved
10 if the applicant had talked to EFSEC and the County prior to withdrawing their
11 application.
12

13 Attached is a copy of my January 15th, 2004 comments Exhibit 50-35 (CW-35), which
14 outlines the issues that Kittitas County needed to discuss with EFSEC and Zilkha so we
15 could move forward with our hearing process. The fact that Zilkha withdrew their
16 application before my DEIS comments could even be discussed leads me to believe that
17 Zilkha had always planned to file for preemption. How could they have known how long
18 the response to comments would take to be prepared by EFSEC if they did not sit down
19 and discuss the issues? Many of the issues could have been taken care of if the applicant had
20 communicated with either EFSEC or the County. This project is both a zoning and a land
21 use sensitive project for Kittitas County.
22

23 Q How is this project an important zoning issue rather than just a siting issue?

24 A The Kittitas County zoning code is set up to regulate such things as minimum lot sizes,
25 permitted uses, conditional uses, building restrictions and setbacks within each zoning

1 district. For instance, in the Forest and Range zone (KCC 17.56), the maximum structure
2 height is two and one-half stories or 35 feet Exhibit 50-40 (CW-40). Proposing structures
3 with a maximum height of 410 feet is a zoning issue, not a siting issue as structure
4 heights are regulated through our zoning code. Without a variance from our zoning code
5 or permit that allows an exception to the code, no structure can exceed 35 feet in height.
6 Receiving a wind resource overlay zoning designation would allow the placement of
7 structures greater than 35 feet in height. Without that permit any structures within the
8 proposed project area are restricted to 35 feet for non-agricultural buildings.

9
10 Structural setbacks would be another example of a zoning issue. Both the Ag-20 zone
11 (KCC 17.29) and Forest and Range zone (KCC17.56) regulate minimum structural
12 setbacks. All buildings placed in Kittitas County are required to meet the minimum
13 setbacks, which is a zoning issue.

14
15 The placement of a windfarm in Kittitas County would be another example of an issue
16 that is more of a zoning issue rather than a siting issue. KCC 17.61A (Windfarm
17 Resource Overlay Zone) regulates the placement of windfarms in Kittitas County and the
18 necessary permits required to operate such a facility Exhibit 50-5 (CW-5). The placement
19 of a windfarm in Kittitas County is not permitted in either the Forest and Range zone or
20 Ag-20 zone without receiving the required permits as shown in KCC 17.61A. That is a
21 zoning issue, not a siting issue.

22
23 Q So how is the Kittitas County zoning code set up for evaluating windfarm proposals?

24 A Our zoning code is set up so that we can evaluate each proposed windfarm project on a
25 case by case basis. The zoning code evaluates all proposals by the following zoning

standards 1) The proposal is essential and desirable to the public convenience; 2) The proposal is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood; and 3) The proposed use at the proposed location(s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive public cost for facilities and service.

The above listed are criteria in our zoning code (KCC 17.61A040(C)) that our Board of County Commissioners uses in making a decision on any proposal for a windfarm in Kittitas County. As Kittitas County certainly has the capacity to do, we decided through public process that windfarms would only be allowed in Kittitas County if they received the necessary permits. The Board set up a consolidated hearing process that has been used before and works well.

Q So how does this fit into the EFSEC process?

A In reviewing the permits that EFSEC has permitted or is currently reviewing, it appears that applicants have typically sought to place projects in areas that are consistent with the zoning code for that particular county or city. In this case, the applicant is attempting to place a windfarm in two zoning districts (Ag-20 and Forest and Range zones), which do not allow windfarms without proper permitting. In order to allow the placement of a windfarm within these areas the applicant is required to make necessary applications to the County as outlined in KCC 17.61A. The applicant has unilaterally withdrawn their application from the County before the Board of County Commissioners could decide if the placement of a windfarm within the requested project area meets the criteria listed in KCC 17.61A. The criteria to either approve or deny a windfarm application was achieved through public process by the citizens of Kittitas County. As a professional planner I

1 cannot see how a windfarm can be placed in Kittitas County when our codes set up to
2 regulate uses shows that the use is not permitted. For our Board of County Commissions
3 to make a decision on a request for a rezone of over 5,900-7,000 acres, we need an
4 environmental document adequate to make such a decision. We were not given that
5 opportunity.

6
7 Q So how is the Kittitas County Comprehensive Plan set up for evaluating windfarm
8 proposals?

9 A Within the Kittitas County Comprehensive Plan one of our Goals, Policies, and
10 Objectives states – “GPO 6.34 - Wind Farms may only be located in areas designated a
11 Wind Farm Resource overlay districts in the Comprehensive Plan.” Without obtaining a
12 comprehensive plan change (sub-area plan) the placement of a windfarm within Kittitas
13 County is not permitted and would be out of compliance not only with the Kittitas
14 County Comprehensive Plan, but the State of Washington per the Growth Management
15 Act. Zilkha Renewable Energy withdrew their application in which they could have been
16 allowed to place a windfarm in Kittitas County per KCC 17.61A. For our Board of
17 County Commissions to make a decision on a request for a comprehensive plan change
18 for a sub-area plan of over 5,900-7,000 acres, we need an environmental document
19 adequate to make such a decision. We were not given that opportunity as the applicant
20 withdrew their application.

21
22 Q At the December 15th, 2003 regular EFSEC meeting you were asked to prepare a
23 consistency schedule for EFSEC to review. Is that correct?

24 A Yes.

1 Q Had you completed these in the past?

2 A Yes, many times for Zilkha staff. We drafted out schedules on several occasions based
3 upon assumptions of when the DEIS and response to comments would be prepared?
4

5 Q Why couldn't you just give them a specific calendar date you would be done?

6 A Because we didn't control when the DEIS would be issued, its completeness, and the
7 time to get a response to comments if needed. We certainly let Zilkha know how long
8 our process would take from the time we could move forward with hearings, we just
9 didn't know when EFSEC would be completed with their portion. When the draft was
10 issued we then knew that we would set hearings once the response to comments was
11 received.
12

13 Q Did you prepare a flow chart as requested for EFSEC?

14 A Yes.
15

16 Q At the January 14th, 2004 DEIS comment hearing, did you speak to Zilkha Attorney
17 Darrel Peoples?

18 A Yes.
19

20 Q What did you discuss?

21 A He stated that he was very pleased with the flow chart and that he or Chris Taylor was
22 going to contact me in the next few days so we could sit down and go over any questions
23 they had. I figured that they wanted to go over my DEIS comments and work out a plan
24 to get us a response to comments as soon as possible. I also figured that Darrel Peoples
25

1 might have the draft development agreement completed so we would be prepared to
2 move forward quickly and efficiently.

3
4 Q Did either of them contact you that week?

5 A No.

6
7 Q Did either of them or anyone else from Zilkha contact you at all to sit down and discuss
8 any questions or issues that they had prior to them filing the pre-emption request?

9 A No. Neither of them communicated with me directly again prior to filing for preemption
10 with EFSEC. They didn't even contact me to tell me that they were filing for
11 preemption.

12
13 Q Did Allan Walker from the Ellensburg Chamber of Commerce call you about Zilkha's
14 application?

15 A Yes, Mr. Walker called me and let me know that Chris Taylor had contacted him and
16 Chris wanted to set up a mediation meeting. I let Mr. Walker know that we have been
17 waiting for Zilkha to contact us for weeks and that our doors are always open to meet but
18 that I didn't see a reason why he should attend since Mr. Walker has no experience in
19 land use matters as far as I could tell. Mr. Walker agreed and sent an e-mail to Chris
20 Taylor letting them know that the County was willing and ready to sit down and talk
21 anytime they are ready, all they have to do is call. Exhibit 50-41 (CW-41).

22
23 Q Did Chris Taylor or anyone else for Zilkha follow up on Mr. Walkers e-mail and contact
24 you?

1 A No. I found it very strange that neither Chris nor Darrel contacted me after Darrel stated
2 that he was excited to sit down and talk and that he or Chris would contact me right
3 away. The tactics they took made it very apparent to me that they had never planned to
4 discuss proceeding with the County and had planned to file for preemption all along.
5

6 Q Were there any meetings in November or December with Zilkha regarding the
7 application process?

8 A No, they never requested a meeting or called regarding any confusion they had with our
9 process after our October meeting.
10

11 Q After Zilkha filed for preemption did they contact you to discuss it?

12 A No. But I contacted Chris Taylor and let him know that if at any time they wish to
13 withdraw their preemption request and resubmit a complete application, we will get their
14 project back on track.
15

16 Q Are you familiar with Mr. Chris Taylor's prefiled testimony regarding the preemption
17 issue?

18 A Yes
19

20 Q In Mr. Taylor's testimony, does he refer to the Wallula project in Walla Walla County?

21 A Yes, in his testimony he compares the Wallula consistency issue to the consistency issue
22 with the Kittitas Valley Wind Power project.
23

24 Q Can you be more specific?

25 A Yes. In his testimony he states that Walla Walla County and the Wallula project

1 proponents achieved consistency within almost 60 days of the applicant applying for a
2 text amendment.

3
4 Q Do you feel that the Wallula project and the Kittitas Valley Wind Power project are a fair
5 comparison when discussing consistency?

6 A No.

7
8 Q Why?

9 A First off, the Wallula project was an industrial project to be located in an industrial zone.
10 The property they planned on placing their facility was already zoned heavy industrial. A
11 rezone of the property was completed in 1993 so the zoning was already consistent for
12 the Wallula project. Second, the proposed project was already consistent with the Walla
13 Walla County Comprehensive Plan, therefore the applicant did not need a
14 Comprehensive Plan amendment. Under Walla Walla County Code the Wallula project
15 was a Conditional Use Permit. Exhibit 50-10 (CW-10)

16
17 Q Can you explain that further?

18 A Yes, in Kittitas County a Wind Farm is neither a permitted nor a conditional use. It is
19 actually not permitted in any zoning district unless the applicant applies for a zoning
20 change, comprehensive plan change, a development agreement, and a development
21 permit. In Walla Walla County only a conditional use permit was needed.

22
23 Q So, it was similar to the Conditional Use Permit process Kittitas County had previously?

24 A Yes.

25 Q So, Zilkha Renewable Energy could have applied for a simple text amendment in 2002?

1 A Yes.

2
3 Q Did they?

4 A No.

5
6 Q What are some other differences between the Wallula project and the Kittitas Valley
7 Wind Power project?

8 A One is the property size difference between the two projects. The Wallula project is
9 placed on a small industrial piece of property (apx 150 acres) while the Kittitas Valley
10 Wind Power project is located on over 5,900 to 7,000 acres of property. Changing both
11 the zoning and land use on over 5,900 to 7,000 acres is a huge land use and zoning issue
12 and doesn't compare to the Wallula project where neither the land use nor the heavy
13 industrial zone designation needed change.

14
15 Q Anything else?

16 A Changing both the zoning and land use on over 5,900 acres is a huge land use issue and
17 doesn't compare to the Wallula project. The Wallula project is set to produce 1300MW
18 of power while the Kittitas Valley project is only slated to have a nameplate power of
19 180MW.

20
21 Q So the Wallula project was already consistent with the zoning and comprehensive plan,
22 was located in an industrial zone, placed on a much smaller piece of property and could
23 produce six times as much energy as the Kittitas Valley project?

24 A Yes, that is true.
25

1 Q Do you see a connection between the two projects with regards to consistency?

2 A No, they are clearly very different from a land use and zoning perspective.

3
4 Q Is there any another reason that the Wallula consistency issue was taken care of so
5 quickly?

6 A Yes, the project proponents submitted their request for a text amendment to Walla
7 County before they filed an application with EFSEC. The Wallula project application
8 was already consistent with Walla Walla land use and zoning when it filed its application
9 with EFSEC because they had already worked that out before filing with EFSEC.

10
11 Q Did representatives from Zilkha try this approach? Did they ever make any attempt to
12 seek consistency prior to filing their application with EFSEC?

13 A No, per my earlier testimony, Zilkha Renewable Energy waited until five months after
14 they submitted their EFSEC application before submitting a complete application to
15 Kittitas County.

16
17 Q So did Zilkha Renewable Energy even ever apply for a text change to the Kittitas County
18 zoning code and comprehensive plan?

19 A No, Chris Taylor keeps bringing up this issue but they never submitted an application for
20 text changes to our zoning code and comprehensive plan. They never requested a text
21 change to our zoning code when the permit process required a conditional use permit in
22 2002. They also never asked for an EFSEC exception like Wallula when our zoning code
23 and comprehensive plan were changed in 2002, which changed the permit process.

24
25 Q What are you hoping is the outcome of these adjudicative proceedings?

1
2 A It is my hope that once EFSEC confirms to the applicant that they have failed to justify
3 preemption, that the applicant will resubmit a complete application in a timely fashion so
4 Kittitas County can move forward with consideration of the zoning and land use changes
5 that are necessary for placing a Windfarm in our County.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25